

JOINT LEGISLATIVE OVERSIGHT COMMITTEE
ON UNEMPLOYMENT INSURANCE

October 2, 2013

**S.L. 2011-401~Focus:
Organizational Changes Enacted to
Reform the Unemployment Insurance System**

- **UI REFORM BEGINS ~ S.L. 2011-401**

Legislation filed in the House by Rep. Howard and in the Senate by Sen. Rucho to reorganize the State's UI system was included, in part, in the 2011 Appropriations Act.

- Section 14.5 of S.L. 2011-145 transferred the Employment Security Commission to the Department of Commerce as a Type I transfer under G.S. 143A-6, effective November 1, 2011. The budget bill did not include the administrative and substantive particulars of the reorganization.
- Senate Bill 532 contained those details subsequently. Gov. Perdue's Executive Order No. 85 advocated the merger of the former ESC into the DES for oversight by the Secy of Commerce. However, when the particulars of the reform effort were ratified in S.L. 2011-401 (Senate Bill 532) on June 17, 2011, Gov. Perdue vetoed the legislation on June 30, 2011. The veto was overridden by the General Assembly on 7/26/2011.
- Highlights: S.L. 2011-401 transferred all statutory powers, duties, and functions of the Employment Security Commission to the Department of Commerce. Established the Division of Employment Security within the Department of Commerce. The former seven member commission was abolished, with an Assistant Secretary appointed to oversee DES.
 - Made DES subject to the rule-making requirements under Article 2A of the Administrative Procedure Act, Chapter 150B of the General Statutes. Under prior law, the Employment Security Commission was exempt from the

Administrative Procedure Act. Existing rules had to be re-adopted in accordance with the procedures set forth in Article 2A. Any existing rule not readopted by December 31, 2012, was subject to expiration.

- Further, the act exempted the Department of Commerce from the contested case provisions of Chapter 150B regarding hearings and appeals conducted under the Employment Security Law.
- A three member Board of Review, appointed by the Governor, was created to hear appeals arising from the decisions of the Division and to determine the policies and procedures for conducting appeals. Board composition includes one member representing employers, one member representing employees, and one member representing the general public. The member representing the general public must be a licensed attorney and will serve as chair of the Board. The members will each serve four-year terms and will be subject to confirmation by the General Assembly.
- Benefits Eligibility Related Changes
 - Definition of misconduct connected with work was amended to include intentional acts or omissions evidencing disregard of an employer's interest or standards of behavior which the employer has a right to expect or which has been communicated to the employee.
 - Definition of “discharge for misconduct with the work” was amended to include:
 - ❖ Violating the employer's written alcohol or illegal drug policy.
 - ❖ Arrest or conviction for an offense involving violence, sex crimes, illegal drugs, or other activities which could negatively affect the employer's reputation in the community or business dealings.

- ❖ Any physical violence related to an employee's work for an employer including, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public.
- ❖ Inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment.
- ❖ Theft in connection with employment.
- ❖ Forging or falsifying any document or data related to employment, including a previously submitted application for employment.
- ❖ Violation of an employer's written absenteeism policy.
- ❖ Refusing to perform reasonably assigned work tasks.
- ❖ The failure to adequately perform any other employment duties as evidenced by no fewer than three written reprimands received in the 12 months immediately preceding the employee's termination.
- Other Amendments Regarding Benefit Eligibility Included:
 - No individual is eligible for benefits if incarcerated.
 - An individual is not penalized for in the Trade Jobs for Success participation.
- Extended the time allowed for an employer to protest a claim from 10 days to 30 days.
- **US Department of Labor objected to certain portions of the new reform law.**
- **Reform effort continued with enactment of S.L. 2012-134, and subsequent legislation.**